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PETITIONS OFFICE

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As below named inventors, we declare that:

Our residences, post office addresses and citizenships are as stated below next to our names.

We believe that we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled: <u>DYNAMIC BANDWIDTH ALLOCATION</u>; as smended by Preliminary Amendment, dated September 15, 1999, Amendment and Response, dated June 2, 2000, and Preliminary Amendment, dated December 4, 2000.

We have reviewed and understand the contents of the above-identified specification and amendments, including the claims.

We acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56 (see attached page 4).

We claim foreign priority benefits under 35 U. S.C. § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed.

Prior Foreign Application Number(s)	Country	Forcign Filing Date (MM/DD/YYYY	Priority Not Claimed	Certified Copy Attached
•			-	

We claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

Application Number(s)

Filing Date (MM/DD/YYYY)

We claim the benefit under 35 U.S.C. § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in Title 37 C.F.R. § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. or PCT Application Number	Filing Date (MM/DD/YYYY)	Palent No.
08/673,002	June 28, 1996	
08/650,408	May 20, 1996	
08/457,295	June 1, 1995	
08/384,659	February 6, 1995	
08/457,317	June 1, 1995	

As named inventors, we appoint the following registered practitioners to prosecute this application and to transact all business in the Patent and Trademark Office connected berewith, with full right of substitution:

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Name	Registration Number	Name ·	Registration Number
Fogg David N.	Reg. No. 35,138	Polglaze, Daniel J.	Reg. No. 39,801
Leffert, Thomas W.	Reg. No. 40,697	Slifer, Russell D.	Reg. No. 39,838
Lundberg, Scott V.	Reg. No. 41,958	Walseth, Andrew C.	Reg. No. 43,234
Myrum, Tod A.	Reg. No. 42.922		•

Attorney Docket No. 100.070US13

Filed: September 15, 1999

Page I of 4

Serial No. 09/397,443

Please direct all correspondence in this case to:

Fogg, Slifer & Polglaze, P.A. P.O. Box 581009, Minneapolis, MN 55458-1009 Telephone No. (612) 252-0014 Fax (612) 252-0019

							
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Inventor No. 1			•				
	st and Middle [if any])	. ". -	Family N	Vame or Surname			
MICHAEL'J.	<u> </u>		GEILE		•	•	
Inventor's	1 04	iA.		•	Dale //	·	
Signature	Thinker Lot	La .		•	5/25/6/		
Residence: City	Batavia	State OH	Country	USA	Citizenship	USA.	
Post Office	2215 Trappers Knoll Co		<u>.</u>		***		
Address		•	· .			<u>. </u>	
City	Batavia	State OH	Zip	45103	Country	USA	
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Inventor No. 2		 	15 3.5	7	 -		
	st and Middle [11 any])	•			•	·	
BRIAN D.	 	•	ANDER	SUN	Dete		
Inventor's	,		•		Date		
Signature	Tal	- 1 10V		LTICA	Cinizanchin	APIT	
Residence: City			Country	USA	Citteristic	USA .	
Post Office Address	11430-50 Place North	1		·	<u>.</u>		
City	Plymouth	State MN	Zip	55442	Country	USA	
Inventor No. 3						<u></u>	
	st and Middle [if any])		Family N	lame or Suiname			
JEFFREY	•		BREDE				
Inventor's				•	Date		
Signature	•	•		· ·			
Residence: City	Eden Prairie .	State MN	Country	USA	Citizenship	USA	
Post Office	8073 Curtis Lane					•••	
Address			• •		,		
City	Eden Prairie	State MN	Zip	55347	Country	USA	
Inventor No. 4							
	st and Middle [if any])		Family N	lame or Surname		·	
ROBERT J.			KIRSCH	.			
Inventor's					Date	•	
Signature	•				<u>.</u>		
Residence: City	Savage	State MN	Country	USA	Citizenship	USA	
Post Office Address	Betivia State OH Zip 45103 Country USA						
City	Savage	State MN	Zin	55378	Country	USA	
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Please direct all correspondence in this

Fogg, Slifer & Polglaze, P.A.
P.O. Box 581009, Minnespolis, MN 55458-1009
Telephone No. (612) 252-0014

•	•		Fax (6	12) 252-00			.
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Inventor No. 1		•			•		
Given Name (Fir	st and Middle [if any])			Family 1	Name or Surgame	=	
MICHAEL J.				GEILE			
Inventor's	[-: .		-	· .	•	Date .	
Signature	•				· ·		
Residence: City	Batavia	State	OH	Country	USA	Citizenship	USA
Post Office Address	2215 Trappers Knoll Co	ourt				٠.	
City	Batavia	State	OH _	Zip	45103	Country	USA
	٠	•	• .				•
Inventor No. 2		•			•		
Given Name (Fir.	st and Middle (if any))				Vame or Surname		
BRIAN D.				ANDER	SON	<u> </u>	
Inventor's	RIA	A 1				Date	
Signature	Sun 9/1	mill	12-				
Residence: City	Plymouth	State	MN.	Country	USA	Citizenship	USA
Post Office	11430 - 50th Place Nort	Ь			• •	•	
Address	701	1 66 4	101 ·	12	55442	Country	USA
City	Plymouth	State	MN	Zip	33442	Соши	USA
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Inventor Na. 3			•	-			
Given Name (Fir:	st and Middle [if any])	•		Family N	Горре от Ѕставое		
JEFFREY				BREDE			
Inventor's Signature	·					Date	
Residence: City	Eden Prairie	State	MN	Country	USA	Citizenship	USA
Post Office Address	8073 Curtis Lane		·				-
City	Eden Prairie	State	MN	Zip ·	SS347	Country	USA
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Inventor No. 4		-				·	
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ROBERT J.			 	KIRSCH	r	, 	
Linventor's	· .			•		Date	
Signature						<u> </u>	
Residence: City	Savage		MN	Country	USA	Citizenship	USA
Post Office Address	13106 Vernon Avenue S	outh ·		٠,,	• •	·	

State MN

Zip

55378

Savage

City

USA

Country

Please direct all correspondence in this

Fogg, Slifer & Polglaze, P.A. P.O. Box 581009, Minneapolis, MN 55458-1009 Telephone No. (612) 252-0014 Fax (612) 252-0019

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Inventor's				<u> </u>		Date	
Signature			•			.	•
Residence: City	Baravia	State	OH	Country	USA	Citizenship	USA
Post Office Address	2215 Trappers Knoll						
City	Baravia	State	OH.	Zip ·	45103	Country	USA
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Inventor No. 2	·				<u> </u>		
	st and Middle [if any])				Vame or Surname		
BRIAN D.		· .		ANDER	SON	.	· · ·
Inventor's	· ·				•	Date	
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Residence: City	Plymouth	State	MN	Country	USA	Citizenship	USA
Post Office	11430 - 50th Place No	orth .					
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City	Plymouth -	State	MN	Zip.	.35412	COMMAN	LOSA
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Inventor No. 3	. 156131 66 7			1 = = = =		 	
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JEFFREY	<u> </u>		·	BREDE		77-40	<u> </u>
Inventor's Signature	Loffey	Bude	·	·n		Date 4/25/200	
Residence: City	Peter Profit	State	MN	Country	USA .	Citizenship	USA.
Post Office Address	8073 Curtis Lane	•			· .	<u> </u>	
City	Eden Prairie	State	MN	Zip	55347	Country	USA
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Inventor No. 4	•						
	st and Middle [if any])	·			ame or Surame		
ROBERT J.				KIRSCH	<u> </u>		
Inventor's	·					Date	
Signature			 		1		***
Residence: City	Savage	State	MN	Country	USA	Citizenship	USA
Post Office Address	13106 Vernon Avenue	South					
City	Savage.	State	MN	Zip	55378	Country	USA

Please direct all correspondence in this - to:

Fogg, Shifer & Polglaze, P.A. P.O. Box 581009, Minneapolis, MN 55458-1009 Telephone No. (612) 252-0014 Fix (612) 252-0019

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Inventor No. 1				•				
Given Name (First	n and Middle [if any]).		Family N	ame or Surmane		•	
MICHAEL J.			· ·	GEILE				
Inventor's	•				•	Date		-
Signature					·		· _	
Residence: City	Batavia	Smic	OH	Country	USA	Citizenship	USA	
Post Office	2215 Trappers Knol	1 Court	•			•		
Address		·			·		· · ·	
City	Batavia	State	OH	Zip	45103	Country	USA	

Inventor No. 2								
	t and Middle [if any])		Family	Name or Sumanne			
BRIAND.				ANDE	RSON			
Inventor's				٠, -	<u> </u>	Date		
Signature .	_ ·			·	<u></u>	<u> </u>		
Residence: City	Plymouth .	State	MN	Countr	y USA	Citizenship	USA	
Post Office	11430 - 50th Place	North		• .		•		
Address					· .			
City	Plymouth -	State	MN	Zip	55442	Country	USA	

Inventor No. 3		•				· _ ·	<u> </u>
Given Name (First and Middle [if any])				Family N	Tame or Surname		
JEFFREY				BREDE			
Inventor's Signature			•	. •		Date	•
Residence: City	Eden Prairie	Sme	MN	Country	USA	Citizenship	USA
Post Office Address	8073 Curtis Lanc						·
City	Eden Prairie	State	MN .	Zip	55347	Country	USA

Inventor No. 4							•		
Given Name (Fir:	st and Middle [if any])			FamilyN	isme or Surname				
ROBERT J.				KIRSCH	KIRSCHI				
Inventor's Signature	Robert	Flac	hund	•		Date G/A/2001			
Residence: City	Savage	State	MN	Country	USA	Citizenship	USA		
Post Office Address	13106 Vernon Avenue	South	•			•			
City.	Savage	State	MN	Zip	55378	Country	USA		

Attorney Docket No. 100.070US13

Filed: September 15, 1999

Page 2 of 4

Inventor No. 5		••				•		
Given Name (Fir.	Name (First and Middle [if any])			Family	Name or Somanne			
MICHAEL J.				FORT				
Inventor's Significa	mhl	197	528			Date	4/24/01	
Residence: City	Pelham	State	NH	Countr	y JUSA	Citizenship	USA	
Post Office Address	S Autumn Street							
City	Pelham.	State	NH	Zip	03076	Country	USA	

Inventor No. 6		•							•
Given Name (Fir.	st and Middle [if any	(D	Family N	lame or Surn	ame				
MARK D.	•			ELPERS				<u> </u>	
Inventor's			. ,	1*			Date		•
Signature	_								
Residence: City	Elk River	State	MN	Country	USA		Citizenship	USA	<u>:</u>
Poet Office	16303 205 Avent	ic NW		,					•
Address				-		· ·			
City	Elk River	· State	MN	Zip	55330	:	Country	USA	

Inventor No. 5							<u> </u>	
Given Name (First and Middle [if any])				Family Name or Surname				
MICHAEL J.				FORT				
Inventor's			•		• •	Date		
Signature				<u> </u>	<u> </u>			
Residence City	Pelham	Store	·NH	Countr	y TUSA	Citizenship	USA	
Post Office Address	5 Autumn Street				•			
City	Pelham	State	NH	Zip	03076	Country	USA	

Inventor No. 6							· ,		
Given Name (First and Middle [if any])				Family Name or Surname					
MARK D.				ELPERS		<u> </u>			
Inventor's Signature	Med		•			Date / 4/23/01			
Residence: City	Elk River	State	MN	Compay	USA	Citizenship	USA		
Post Office Address	16303 205 Avenue NW	7	•	•			•		
City	Elk River	State	MN	Zip	55330	Country	USA		

§ 1.56 Duty to disclose information material to patentability.

- (a) A parent by its very name is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information committed therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) it refutes, or is inconsistent with, a position the applicant takes in:
 - (i) opposing an argument of unpatentability relied on by the Office, or
 - (ii) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or procecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assigned or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (c) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.